

Comments to the Federal Communications Commission
from the National Consumers League
Regarding the Review of Regulatory Requirements for IP-Enabled Services
WC Docket 04-36
May 28, 2004

Introduction

The National Consumers League (NCL) is a nonprofit organization founded in 1899 to identify, protect, represent, and advance the economic and social interests of consumers and workers. NCL supports the development of new technologies that will help make telecommunications more accessible and affordable to all consumers. IP-Enabled Services have the potential for delivering significant benefits to consumers. However, the Federal Communications Commission (FCC) must ensure that basic principles of universal service, public safety, consumer protection, and disability access are integral parts of any regulatory framework for IP-enabled Services. In these comments, we will focus on Voice over Internet Protocol (VoIP).

The main points in these comments are that:

- VoIP is a “telecommunications service” and should be regulated as such;
- VoIP providers must contribute to the federal and state universal service funds;
- VoIP must provide full E911 service to users and collect applicable surcharges;
- All consumer protections for telephone users must apply to VoIP;
- All mandates for disability access must apply to VoIP;
- States should not be preempted from asserting regulatory oversight and applying consumer protection laws when VoIP is used to make intrastate calls;

- Costs of telecommunications services should not be unfairly shifted to consumers who do not use VoIP.

VoIP is a “telecommunications service” and should be regulated as such

When consumers make or receive calls, few probably understand, or care, how their telephones actually work. Whether the service is conveyed by copper wire, fiber, radio signals, or Internet protocol is immaterial, as long as the voice communication between the calling and called party is essentially the same. Indeed, VoIP is being marketed as a telephone service, and consumers who purchase VoIP will substitute it for their current telephone service. The fact that this new technology may enable providers to offer additional enhanced services, some of which may be “information services,” does not change the basic nature of the voice service that consumers are buying when they switch to VoIP.

VoIP is clearly not an “information service.” It is simply a new way to provide “telecommunications service,” and should be regulated as such. The FCC can make distinctions between basic and enhanced VoIP services for regulatory purposes. But it makes no sense to differentiate between the voice services provided through VoIP and those provided through other technologies. While telecommunications technology is constantly evolving, the essential nature of voice communications on which consumers depend does not change. It is how consumers use the service, and not the means by which the service is delivered, that should determine the applicable regulatory requirements. VoIP customers pick up the phone to make or receive calls, using the same telephone numbers as they did before. Their voices and the words they speak are no different than they use other telephone services.

We believe that it would be far better for the FCC to categorize VoIP as a “telecommunications service” (which accurately describes it) and forbear from applying certain regulations, if appropriate, than to categorize it as an “information service” (which does not accurately describe it) and apply certain telecommunications requirements to it. The latter approach would not guarantee that consumers would have equivalent rights and safeguards, even though the service they are using is essentially equivalent.

Moreover, the FCC would be heading down the wrong path, leading to regulatory uncertainty and confusion as telecommunications technology continues to evolve. The FCC must chart a clear path now for preserving consumer and societal interests as telephone services are delivered by new technologies in the future. In order to promote competition and provide adequate consumer safeguards, telecommunications regulations must be technology neutral.

VoIP providers must contribute to the federal and state universal service funds

The federal and state universal service funds have been established to ensure that all Americans have affordable access to telecommunications services. These funds help people in rural and other high-cost areas, and low-income people, to obtain basic telephone service. They also make it possible for schools, libraries, and health-care facilities to obtain advanced telecommunications services. These are important social priorities that will not diminish or disappear with the advent of IP-enabled services such as VoIP.

However, if VoIP providers are not required to contribute to the universal service funds, the amount of money available to implement those social priorities will certainly diminish, perhaps significantly. Moreover, there is no reason to treat VoIP providers differently than other telecommunications service providers in this regard. They should contribute to this public good,

just as cable companies that offer telecommunications services and wireless companies do. Furthermore, other telecommunications providers will be competitively disadvantaged if VoIP providers do not have to contribute to the universal service funds.

We also wonder whether low-income people will be able to obtain VoIP service under Lifeline/Linkup programs. As this service becomes more ubiquitous, it may be important to ensure that it is affordable to all.

VoIP must provide full E911 service to users and collect applicable surcharges

E911 service is absolutely vital to public safety and homeland security. Emergency service personnel must be able to have accurate callback and location information. Consumers who substitute VoIP for their current telephone services will reasonably expect that they can dial 911 and get the help they need, immediately. All telecommunications services must be capable of providing full E911 service so that it is universally available. It would be a great disservice to the public for the FCC to make exceptions in this regard for VoIP.

Voluntary agreements and cooperative arrangements between VoIP providers and public safety organizations are laudable, but they do not guarantee that full E911 services will be available to all users, since not all VoIP providers participate in them. Furthermore, E911 services should not be offered as an “option.” This is too vital a service to make dependant on provisions described in small print on lengthy contracts that few consumers read or understand.

The only way to ensure universal access to full E911 services is through unequivocal FCC requirements. These can be based on short-term and long-term goals. Such requirements will provide an incentive for the development and deployment of new E911 solutions. The FCC should impose deadlines for compliance and strong penalties for noncompliance.

In addition, the FCC should be careful not to take any action that would interfere with state and local assessment and collection of surcharges to fund 911 services. These funds are crucial to the ability of communities to provide and upgrade their emergency service systems. VoIP providers should collect these surcharges just as other telecommunications services do.

All consumer protections for telephone users must apply to VoIP

FCC regulations provide important protections for consumers, including: truth-in-billing requirements; disclosure requirements, prohibited practices, and dispute rights in relation to pay-per-call services; do-not-call rights and other telemarketing restrictions; the right to limit use of CPNI; and requirements to confirm carrier switches and dispute rights for illegal “slamming.” The need for these protections, and the responsibilities of the FCC and the states to enforce consumers’ rights, are the same regardless of the manner in which the telecommunications service is provided.

Concerns about privacy are heightened by the fact that IP-enabled services may be able to collect and disseminate subscriber information even more easily than other telecommunications services. VoIP providers must have the same duty as other telecommunications providers to protect customer information and limit its use. This is important not only for consumer protection but to encourage the acceptance of new telecommunications service technologies. Consumers will not use VoIP if they fear that their sensitive personal information will be used for marketing or other purposes.

Medical information is especially sensitive. While IP-enabled services may lead to improvements in emergency service response, the potential for VoIP providers to access databases of consumers’ medical information in order to forward it to emergency personnel

raises serious concerns, especially since VoIP providers are not regulated by health privacy laws. The FCC must place reasonable limitations on the ability of VoIP providers to access and use consumers' medical information.

Caller ID blocking is another important privacy concern. Some consumers do not want their identity to be shown when they make calls because of fear for their personal safety, while others simply want the information to remain private. VoIP providers must be required to respect consumers' rights not to have their numbers or names revealed, or to allow the called party to obtain the information in order to call them back.

All mandates for disability access must apply to VoIP

Under Section 255 of the Telecommunications Act, people with disabilities must be able to access and use telecommunications services. VoIP should be no exception. To the disabled user, there is no functional difference between using a phone that transmits voice via the Internet and one that transmits voice through wire or some other means. VoIP should be compatible with TTYs and meet all the other standards applicable to other types of telecommunications services.

Furthermore, VoIP providers must be required to contribute to the funding for telecommunications relay services, which are essential for many people with hearing or speech difficulties. Without their participation in the fund, there will be fewer resources to make access via relay available to people who rely on it to communicate by telephone.

States should not be preempted from asserting regulatory oversight and applying consumer protection laws when VoIP is used to make intrastate calls

Despite the fact that VoIP calls are transmitted through the Internet, they still originate and end at specific telephone numbers; they are not simply messages floating in the air. Calls made and received within a state should be considered intrastate calls, regardless of whether they are delivered by VoIP or some other method of transmission, and state utility commissions should clearly have jurisdiction.

States play an important role in enforcing service quality standards and other consumer protections. The FCC should not preempt or interfere in any way with states' regulatory oversight and consumer protection authority in regard to intrastate VoIP calls.

Costs of telecommunications services should not be unfairly shifted to consumers who do not use VoIP

Though many people will probably gravitate to VoIP services because of potentially lower prices and richer features, there will always be some who do not have broadband access, either by choice or because it is not physically or economically available to them. We are concerned that in order to offer lower prices and richer features to VoIP users, carriers may shift costs to low-income and other residential customers who only have basic telephone service.

This would be unfortunate and unfair. The FCC should be careful not to take any action that would enable telecommunications providers to shift costs unduly to consumers who do not use VoIP.

Conclusion

Good quality, reasonably and affordably priced, and accessible telecommunications are essential for all Americans. VoIP and other IP-enabled services can provide many benefits to individuals, to our economy, and to society in general. At the threshold of this new technology, the FCC must ensure that basic principles of universal service, public safety, consumer protection, and disability access are integral parts of any regulatory framework for IP-enabled Services. We appreciate the opportunity to provide our views on this important issue from the consumer perspective.

Respectfully submitted by:

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